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RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

Note verbale dated 12 February 1993 from the Permanent Representative of the Russian Federation to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights

I have the honour to enclose the conclusions of the parliamentary hearings on "The observance of human rights in the Republic of Latvia and the Republic of Estonia", prepared by the Human Rights Committee of the Supreme Soviet of the Russian Federation.

I should be grateful if you would arrange for it to be circulated as an official document at the forty-ninth session of the United Nations Commission on Human Rights under agenda item 20.

(Signed) E. Makeev
Ambassador,
Permanent Representative of the
Russian Federation in Geneva

Conclusions of the Human Rights Committee of the Supreme Soviet of the Russian Federation on the results of the parliamentary hearings on "The observance of human rights in the Republic of Latvia and the Republic of Estonia"

The attention of the Human Rights Committee of the Supreme Soviet of the Russian Federation was drawn to the problem of the observance of human rights in the Republic of Latvia and the Republic of Estonia by a number of factors, among which the following may be mentioned in particular:

1. Many appeals to the Committee from individuals belonging to the so-called "Russian-speaking population" of Latvia and Estonia and from public organizations acting in the interests of these categories of people, containing complaints about unjustified limitations and infringements of their civic, political, economic and social rights. (As used in these conclusions, the term "Russian-speaking population" is understood as covering a somewhat wider range of people than those counted as Russian on the basis of ethnic origin criteria.) The Human Rights Committee is entitled to extend the meaning of the term in this way because the Russian minority's position is identical to that of the Ukrainians, Byelorussians, Tatars, etc. Thus at meetings in October 1992 between Mr. Ibrahim Fall, Director of the United Nations Centre for Human Rights, and representatives of Ukrainian cultural societies in Latvia (the Ukrainian Society) and Armenia (Ankol), views and wishes were expressed to the Latvian leadership which were no different from those put forward during the hearings by representatives of specifically Russian societies and organizations);

2. The relatively ineffective nature of the current process of negotiation, during which the Ministry of Foreign Affairs of the Russian Federation is naturally examining human rights issues as one of its priority areas of activity;

3. The impact of the situation of the hundreds of thousands of Russians in Latvia and Estonia on political relations between the Russian Federation and those States and on political stability in Russia itself;

4. Natural fears that failing to settle the problem of the status of the Russian-speaking population and the observance of their rights in the Republics of Latvia and Estonia could complicate the political situation in the region as a whole.

The Human Rights Committee of the Supreme Soviet of the Russian Federation wishes to lay particular stress on the fact that consideration of the question of human rights in two neighbouring States at the special hearings cannot in any way be regarded as interference in the international affairs of sovereign States, or as any kind of unfriendly act, because human rights are not a State's exclusively internal affair, and also because the exchange of opinions during the hearings had only one aim - to get a more precise picture of the state of affairs, and on that basis to continue to seek mutually acceptable solutions.

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Most of the complaints and appeals made by the Russian-speaking population of Latvia and Estonia to the Human Rights Committee are either directly concerned with the problem of obtaining citizenship or are a consequence of the decisions taken. For that reason the Committee analysed the relevant legislation.

Legislation on citizenship of the Republic of Latvia

The Decree on Restoration of the Rights of Citizens of the Republic of Latvia and the Basic Conditions governing Naturalization adopted by the Supreme Soviet of the Republic of Latvia on 15 October 1991 regulates the main aspects of the acquisition of citizenship of the Republic of Latvia until the entry into force of the relevant law, a draft of which will be considered after the elections to the Parliament. Under this Decree persons who had citizenship of the Republic of Latvia on 17 June 1940 and their direct descendants automatically become citizens of Latvia, irrespective of where they may be permanently resident at present. Other persons now permanently resident in the territory of Latvia who had citizenship of the Latvian Soviet Socialist Republic in addition to USSR citizenship are regarded as aliens (or stateless persons).

Fairly tough conditions are laid down for the acquisition of Latvian citizenship.

Not less than 16 years' permanent registration and residence in Latvia is required for this purpose. Applicants for citizenship have to pass an examination in colloquial Latvian, and also one on the Constitution of the Republic of Latvia, and to swear allegiance to Latvia.

In addition, there is a procedure under which Latvian citizenship can be acquired by: persons who have rendered special services to Latvia; persons who at the time of the entry into force of the Decree were resident and permanently registered in Latvia and who, not being citizens of the Republic of Latvia, had legally entered its territory and were permanently resident there on 17 June 1940, together with descendants of such persons who at the time of the entry into force of the Decree were resident and permanently registered in Latvia.

Similar provisions are also contained in the draft Citizenship Act.

In addition, the Decree specifies a considerable category of persons who may not be given citizenship of the Republic of Latvia under any circumstances. These are people who came to Latvia under the Mutual Assistance Pact between Latvia and the USSR of 5 October 1939; persons who by unconstitutional methods opposed the independence of the Republic of Latvia, the democratic parliamentary State system or the existing State authority in Latvia, where that has been established by a court verdict; persons who after 17 June 1940 chose the Republic of Latvia as their place of residence after demobilization from the USSR armed forces, internal forces or security services, not having been permanently resident on the territory of Latvia at the time of their call-up; persons spreading chauvinist, fascist, communist or other totalitarian ideas, or ideas of class dictatorship arousing national

discord or enmity, where that has been established by a court verdict; persons sent to Latvia after 17 June 1940 on the staff of the Communist Party of the Soviet Union or the Young Communist League; persons registered as drug addicts; persons living without any legal means of support.

Legislation on citizenship of the Republic of Estonia

The Estonian legislation on citizenship is on the whole considerably more liberal and is based on reintroduction of the Citizenship Act of 1938. Accordingly, persons who were citizens of Estonia up to the annexation and their direct descendants automatically become citizens of the Republic of Estonia. The period of residence necessary to qualify for naturalization is not very long - two years, plus a further year after applying for naturalization - but the applicant is also required to pass an examination in the Estonian language.

At the same time there are a number of limitations on the right to citizenship: under the Estonian legislation in force citizenship cannot be obtained by military personnel in the active service of foreign States; persons formerly on the staff of the security or intelligence organs of the USSR; persons who have convictions for serious offences against the person or who have been repeatedly sentenced by a criminal court for wilful offences; and, finally, persons with no permanent source of legal income.

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An analysis of the citizenship legislation and related texts leads to a number of conclusions:

1. The citizenship legislation of the Republics of Latvia and Estonia (and the legislation on other key matters that is based on it) is founded on the tenet that the events of 1939-1940 are to be regarded as occupation and colonization of the Baltic States by the USSR. Their logical and political aim is the gradual reversal of the consequences, i.e. "deoccupation" and "decolonization". However, according to the principles of international law - whether those that existed in the 1940s, or those that exist today - the sending of Soviet troops into the Baltic countries with the forced consent of their Governments as a result of activities not leading to war did not in itself mean the establishment of USSR sovereignty over their territory. However, the presence of Soviet troops during elections and afterwards was a highly important factor preventing any real expression of their will on the part of the peoples of Latvia and Estonia. Their entry into the USSR came about as a result of a military threat, of outside pressure, i.e. under duress. The legal formalization of their entry can be regarded as an act of annexation in the broadest modern sense of this term.

This is grounds for regarding the instruments formalizing the Baltic States' entry into the USSR as invalid, and hence justifies their leaving the Union without going through the necessary procedure.

However, to make denial of the legality of the Republics' entry into the USSR a basis for non-recognition of citizenship of the Latvian and Estonian SSR is wrong in law, as it logically leads, for example, to denying the legality of the present Latvian Parliament, of its decisions and of all legal enactments belonging to the Soviet period.

In a broader context, it has to be said that the idea of restoring, or reinstating, the statehood of 1940 and renouncing direct legal succession to the Latvian and Estonian SSR cannot in general be put into effect with any legal consistency. For example, the property rights of the Republic of Estonia and the Republic of Latvia over the assets of the Estonian and Latvian SSR are not and cannot be contested by anybody, yet at the same time there is a denial of any obligations to citizens of the Estonian and Latvian SSR from the time when the USSR was a single State.

In essence, to treat citizenship of the Latvian and Estonian SSR as never having existed is simply to deprive hundreds of thousands of permanent residents of these States arbitrarily of the right to consider themselves in one way or another involved in the history and fate of Latvia and Estonia. The Russian and Russian-speaking population of the Baltic States have been integrated into their societies and have become part of the peoples (countries) of the Baltic.

To declare 38 per cent of the permanent population in Estonia and 48 per cent in Latvia aliens or stateless persons is not only an offence against their human dignity, but an unquestionable violation of the fundamental principles of the Universal Declaration of Human Rights (art. 6 and art. 15); article 25 (c) of the International Covenant on Civil and Political Rights; article 10 (2) of the Convention on the Reduction of Statelessness.

An independent analysis of Latvia's citizenship legislation carried out by the non-governmental organization Helsinki Watch also came to the conclusion that it violated articles 2, 25 and 26 of the International Covenant on Civil and Political Rights. In principle, punishment for past membership of a political group or State organization is also incompatible with the spirit of section 5.9 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

2. The material in the Committee's possession on the way the naturalization rules are applied in practice shows that the procedure of setting an examination in the official language acts in a number of cases as a special kind of filter limiting people's chances of getting citizenship, in that the procedures and the necessary knowledge of the language are not defined by law and are in fact left entirely in the hands of the bureaucracy.

At the hearings, a considerable number of authentic cases were cited where the procedure for the examination in the official language was deliberately made more difficult through an unjustified raising of the required standard and widening of the range of subjects in order to prevent the candidate from passing.

The Committee is not in any way calling in question the need for the Russian-speaking population to learn the official language of Latvia and Estonia and to use it in official business, etc. However, the two States have not provided facilities for the non-indigenous population to learn the language. When the Union was still in existence, purely moral considerations aside, there was no objective need for general knowledge and use of the language of the States belonging to it. Russian was the language of communication between the different nationalities. This is not to deny that it was used by the regime as a tool of policy in nationality and personnel matters to the detriment of the languages and cultures of other peoples. However, the Russian-speaking population are now being held collectively responsible for the crimes of that regime. In present circumstances, the transition to priority for the official language ought to take account of demographic realities. And they are as follows: in seven major cities of Latvia the indigenous population account for between 6 and 49 per cent of the inhabitants; in Estonia, all Narva, Kohtla-Järve and all the north-east are almost 100 per cent Russian speaking. In Latvia, 79 per cent of the Russian-speaking population do not have a command of the Latvian language. Consequently, they are being denied the chance to obtain citizenship, to enter the public service, to get higher education, which now is only guaranteed in the official language, and so on. Official claims that language study programmes have been specially financed by the State over the past three years are not entirely accurate. According to figures from the Department of National Affairs of the Latvian Ministry of Justice, of the 50 million roubles allocated for these purposes, only 1 million was spent on teaching the adult population Latvian.

The fact that the process of teaching the Russian-speaking population the official language has not been supported by adequate action and resources on the part of the State was noted repeatedly by independent observers (staff of the Commission on Security and Cooperation in Europe of the Helsinki Committee, September 1992) and in statements by representatives of the Russian-speaking population of Latvia and Estonia who attended the hearings. This aspect was also recognized in statements and answers to questions by representatives of official circles in Latvia and Estonia who were taking part in the hearings.

Mention should also be made of other measures that hinder the acquisition of Latvian citizenship, above and beyond the tough requirements laid down in the existing legislation. Thus in the process of registering the permanent residents of Latvia, which is going on all over the Republic, the number of potential applicants for citizenship is considerably reduced by the following procedure. If a resident of Latvia was directly or indirectly linked through his work with the armed forces establishment (even as a member of a serviceman's family), the period of residence in Latvia for him and his family (including his former family) is counted from the date of demobilization. Time spent as a civilian worker in a munitions factory, as a watchman in a sanatorium, or as a nanny in a kindergarten belonging to the Ministry of Defence does not count towards the total number of years spent in Latvia.

The way the existing legislation on citizenship and language is applied in the Republics of Latvia and Estonia, together with the absence of an acceptable transition period and of State support for the study of the

official languages, together create a regime which is unfavourable even to those representatives of the Russian-speaking population who want to be integrated into the new State and legal order. The rate at which such integration is proceeding gives grounds for alarm: for example, out of a Russian-speaking population of 600,000, only 496 had become citizens of the Republic of Estonia by the end of November 1992, while 6,000 had applied for citizenship.

3. The decisions adopted in the Republics of Latvia and Estonia on citizenship and language have served as the basis for a number of legislative measures which in practice lead to a much wider limitation of the rights of the Russian-speaking population.

The legislative measures adopted in pursuance of the Decree of the Supreme Soviet of the Republic of Latvia on restoration of citizenship of the Republic of Latvia and the basic conditions governing naturalization introduce additional restrictions for the non-indigenous population in the sphere of political, civic, economic and social rights. Thus under the Constitutional Act on the Rights and Duties of the Individual and the Citizen of the Republic of Latvia, non-citizens are not merely deprived of the right to elect and be elected to organs of Government, to occupy public positions, to take part in privatization, even of their own housing, or in share issues, or to own land, but even to freely choose their place of residence. The present Immigration Act leads to massive violation of the right of families to be united. The former head of the Department of National Affairs, Mr. Vladimir Steshenko, has admitted that the Citizenship and Immigration Department does not even bother about Latvian laws or the decisions of its own courts in favour of non-indigenous residents of Latvia.

A similar regime exists for non-citizens in Estonia. Restrictions have been imposed, in particular, on the right to work as an official in government offices or courts, in arbitration, as a government procurator or notary, in the police or in the customs service. Under the Constitution, restrictions can be placed on the exercise by non-citizens of the right to disseminate ideas, opinions, beliefs and information and to hold meetings without getting permission in advance. There is no right to form political parties.

The present Immigration Act and the immigration quotas fixed annually not only prevent families from being united, but are also directly discriminatory: in the decrees on immigration quotas it is stated that the quota must be negative in the north-eastern regions of Estonia, i.e. Narva, Kohtla-Järve, Sillamäe, where the overwhelming majority of the population are non-Estonians.

Both in Latvia and in Estonia the official language proficiency certificate is inevitably leading to mass unemployment among Russians, which results in a vicious circle: under the law of both Republics, having a legal source of income is a prerequisite for obtaining citizenship. An unemployed alien or stateless person not only will not become a citizen of Latvia or Estonia, but is even deprived of the right to State assistance with job placement and to benefits.

In these circumstances, those who are in the most difficult position are the most socially vulnerable categories of the Russian-speaking population - pensioners who, with the curtailment of social payments for non-citizens, find themselves unable even to pay their rent and household bills, elderly people who have serious difficulty in learning the official language. The hardest hit are veterans of the armed services. In Latvia they number some 50,000 not counting members of their families, i.e. there are practically 100,000 elderly people, often on their own, some of whom are veterans of the anti-Hitler coalition.

It is a matter of particular concern that the legal status of the Russian-speaking population in Latvia and Estonia is not clear. In the absence of legislation establishing the status of foreign citizens, stateless persons and permanent residents, these people have no firm basis on which to establish and discover their rights. People who formerly held citizenship of the Latvian SSR and Estonian SSR and who continue to reside in the territory of these States have not automatically acquired the citizenship of any other State, that is, they are in practice stateless. In this case the refusal to grant citizenship to children born from stateless persons after the entry into force of the corresponding legislation on citizenship is counter to article 24.3 of the Covenant on Civil and Political Rights, articles 1 and 7 of the Convention or the Rights of the Child of 1990 and article 1 of the Convention on the Reduction of Statelessness of 1961.

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The Human Rights Committee of the Supreme Soviet of the Russian Federation, having analysed the material in its possession, considers that the situation that has arisen with regard to the observance of human rights in Latvia and Estonia is extremely tense and fraught with serious danger. It is also disturbed by the absence of any positive movement towards the settlement of these questions, which affects not only relations at the inter-State level between Russia and Latvia and Russia and Estonia, but also the way the Russian-speaking population of the Republics of Latvia and Estonia feel about their position in society.

According to data from sociological inquiries carried out in Latvia by the All-Russian Centre for the Study of Public Opinion among the Russian-speaking population, between 1990 and 1992 there was a marked increase in anxiety among non-citizens and a decline in confidence in the public authorities of the Baltic Republics and the Russian Federation.

The narrow framework of an analysis of the extent to which the legislation of the Republics of Latvia and Estonia is consistent with international rules and standards relating to human rights cannot and should not distract attention from the more general and more important question - the question of the political choice that has been or will be made by Latvia and Estonia in relation to their Russian-speaking populations: either a policy designed to force out the non-indigenous population, to "squeeze" them out by all possible means, to establish an ethnocratic State, using legal and non-legal methods alike; or a deliberate policy of integration of the Russian-speaking population into the peoples of Latvia and Estonia, of observance of human rights and the rights of national minorities.

Letting any group interests and rights (rights of a nation, race or class) take precedence over human rights has never led in any country to the building of a democratic State governed by the rule of law. There is scarcely any need for any further experiments along those lines.

The Human Rights Committee understands the concern of Latvia and Estonia at the complex demographic situation in the two Republics, but it does not consider that the interests of one ethnic group can be set above basic human rights and fundamental freedoms, particularly when in present circumstances there is no question of a threat to the national identity of the Latvian or Estonian people.

Settlement of the issues connected with the observance of human rights in Latvia and Estonia could be a sound basis for establishing Russian-Latvian and Russian-Estonian relations on a fundamentally new principle of cooperation between equals, aimed among other things at overcoming the legacy inherited by our States from the totalitarian past.

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The Human Rights Committee of the Supreme Soviet of the Russian Federation also wishes to draw attention to the undesirable train of events that might be set in motion by the Russian-speaking population's uncertain situation in Latvia and Estonia and experience of discrimination.

In a situation of profound economic crisis and growing unemployment, it would be impossible and indeed undesirable to start repatriating people forthwith, even those who regard themselves as ethnic Russians and are willing to take the citizenship of the Russian Federation. Thus continuation or intensification of the policy designed to drive them out of Latvia and Estonia will inevitably lead to an escalation of social tension, to politicization and radicalization of the Russian-speaking population. Depriving non-citizens of political rights, and hence of socially acceptable means of asserting their interests, can have the most dire consequences, leading to greater instability and stirring up chauvinistic and nationalistic forces, both in Russia and in Latvia and Estonia, which could become a threat to the security of the whole Baltic region.

It is obvious that such a course of events is not in the national interests either of Russia or of the Baltic States, nor is it in the interests of the world community as a whole.

The Human Rights Committee hopes that this - most unfavourable - scenario for future developments can be avoided, given goodwill and respect for the basic rights and freedoms of individuals and national minorities.

During the hearings it was confirmed once again that as far as the Russian Federation is concerned these matters are not linked in any way to the problem of the withdrawal of troops from Latvia and Estonia and cannot be regarded as the basis for any kind of sanctions.

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The Human Rights Committee of the Supreme Soviet of the Russian Federation considers that the basis for resolving the problem that undoubtedly exists with regard to the Russian-speaking minorities in the Republics of Latvia and Estonia can and should be recognition of the priority of the rights of the individual, the generally recognized international rules and standards for human rights and respect for the rights of minorities, with the essential condition that due regard should be paid to the economic, demographic and linguistic facts of the situation that came into being in 1991.

The Committee wishes to propose to its distinguished colleagues from the Parliaments of the Republic of Latvia and Estonia that consideration should be given to the possibility of introducing appropriate amendments in their national legislation on citizenship, providing in particular for the following:

Abolition of the examination in the official language for persons over the age of 50;

Precise specification by law of the requirements for proficiency in the language and monitoring of compliance with them in practice;

Reduction of the period of residence necessary to obtain citizenship of the Republic of Latvia to five years and amendment of the procedure for determining the duration of permanent residence in the territory of the Republic;

Review and reduction of the range of persons who cannot be given citizenship, particularly in the Republic of Latvia;

Granting of citizenship to children born of stateless persons.

It is also a matter of urgency to establish by law the status of permanent residents of the Republics of Latvia and Estonia on the basis of the international rules on human rights, without any discrimination in the field of civil, political, economic, social and cultural rights.

The Human Rights Committee of the Supreme Soviet of the Russian Federation considers that it would be of considerable help in dealing with the problems that exist if commissions of independent experts were set up on a bilateral or multilateral basis and assigned to deal with particular sets of rights, which could be specifically determined by special international agreements between the parties concerned.

Other questions relating to the observance of human rights in Latvia and Estonia were raised during the hearings. If the Human Rights Committee has concentrated mainly on the situation of the Russian-speaking population, that is solely due to the fact that in this sphere violations of human rights are taking place on a mass scale, so that it is legitimate to speak of a deliberate State policy.

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